

ICRC No.: EMn011030094

[REDACTED],
Complainant,

v.

ARAMARK FACILITY SERVICES,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following Notice of Finding with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred. 910 IAC 1-3-2(b)

On February 28, 2011, [REDACTED] ("Complainant") filed a complaint with the Commission against Aramark Facility Services ("Respondent") alleging sex and national origin discrimination in employment in violation of

[REDACTED] the Indiana Civil Rights Law (IC 22-9, et seq.) Complainant is an employee and Respondent is an employer as defined by the Civil Rights Laws. IC 22-9-1-3(h) and (i) Accordingly, the Indiana Civil Rights Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was terminated due to his sex and/or national origin/ancestry. In order to prevail, Complainant must show that: (1) he is a member of a protected

class; (2) he suffered an adverse employment action; (3) he was meeting Respondent's legitimate business expectations; and (4) similarly situated employees of a different sex or ancestry were treated more favorably.

Complainant is clearly a member of a protected class by virtue of his national origin/ancestry and sex. It is also undisputed that he suffered an adverse employment action when Respondent terminated him on February 9, 2011. The only remaining facts in question are whether Complainant was meeting his employer's expectations or, if not, whether Respondent treated similarly situated employees of a different national origin and sex were treated more favorably.

The record indicates that Complainant was not meeting Respondent's legitimate business expectations. The evidence indicates, and Complainant acknowledged, that he did sleep on the job. However, Complainant claims that an American-born, female employee "nodded off" more than once but was not terminated. Further, testimony indicates that Complainant's comparator on at least one occasion hid herself to avoid being detected when she was sleeping at work. The investigative record also shows that Complainant's comparator had previously been disciplined for smoking in the restroom. The available evidence supports the conclusion that this similarly-situated, American-born female was treated more favorably than Complainant.

Based upon the findings, probable cause exists to believe that an unlawful discriminatory practice occurred. A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged in the above-referenced case. IC 22-9-1-18, 910 IAC 1-3-5 The parties may elect to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election, or the Indiana Civil Rights Commission will hear this matter. IC 22-9-1-16, 910 IAC 1-3-6

July 22, 2011
Date

Joshua S. Brewster, Esq.,
Deputy Director
Indiana Civil Rights Commission